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11 *Attorneys for Plaintiff Patrick Keegan*

12 **UNITED STATES DISTRICT COURT**  
13 **SOUTHERN DISTRICT OF CALIFORNIA**

14 PATRICK KEEGAN, on  
15 behalf of himself and  
16 others similarly situated,

17 Plaintiff,

18 vs.

19 BOSE CORPORATION,

20 Defendant.

Case No.: '16CV0232 BEN MDD

**CLASS ACTION COMPLAINT**

**1. Violation of California's Song-Beverly Credit Card Act,  
Cal. Civ. Code § 1747, et seq.**

**JURY DEMANDED**

1 Plaintiff Patrick Keegan (“**Plaintiff**”), by and through his undersigned counsel,  
2 individually and on behalf of all others similarly situated (the “**Class**”), alleges the  
3 following facts and claims upon personal knowledge and upon information and belief  
4 as to all other matters as follows.

### 5 **NATURE OF THE ACTION**

6 1. This action arises out of Defendant Bose Corporation’s repeated, intentional,  
7 and systemic violations of the Song-Beverly Credit Card Act (hereinafter “**Song-**  
8 **Beverly Act**” or “**Act**”).

9 2. The Song-Beverly Act “is designed to promote consumer protection” and is  
10 intended to “protect the personal privacy of consumers who pay for transactions with  
11 credit cards.” *Pineda v. Williams-Sonoma Stores, Inc.*, 51 Cal. 4th 524 (2011) (*citing*  
12 *Assem. Com. on Finance & Insurance, Analysis of Assembly Bill No. 2920 (1989-*  
13 *1990 Reg. Sess.) as amended Mar. 19, 1990, p. 2).*

14 3. The Song-Beverly Act was enacted to address two principle privacy  
15 concerns. “First, that with increased use of computer technology, very specific and  
16 personal information about a consumer’s spending habits was being made available  
17 to anyone willing to pay for it; and second, that acts of harassment and violence were  
18 being committed by store clerks who obtained customer’s phone numbers and  
19 addresses.” *Pineda*, 51 Cal. 4th at 534-35.

20 4. To promote these purposes, section 1747.8(a)(2) of the Act prohibits  
21 businesses from requesting that cardholders provide personal identification  
22 information during credit card transactions, and then recording that information. In  
23 1991, the Legislature broadened subdivision (a)(2) from not only prohibiting a  
24 business from “requiring” that a customer provide personal identification  
25 information, but also forbidding a “request” for personal identification information.  
26 This broadening amendment was intended to prevent businesses from making an end-  
27 run around the law by claiming that the customer furnished his personal identification  
28 information voluntarily. *Pineda*, 51 Cal. 4th at 540.



1 11. Venue is proper in the United States District Court for the Southern District  
2 of California pursuant to 28 U.S.C. § 1391 for the following reasons: (i) Plaintiff  
3 resides in the County of San Diego, State of California which is within this judicial  
4 district; (ii) the conduct complained of herein occurred within this judicial district;  
5 and (iii) Defendant conducted business within this judicial district at all relevant  
6 times.

### 7 **FACTUAL BACKGROUND**

8 12. On or about December 18, 2015, Plaintiff was shopping at a Bose retail store  
9 owned and operated by Defendant, located at 5630 Paseo Del Norte, Suite 140, in  
10 Carlsbad, California. During his visit to the Defendant's retail store, Plaintiff  
11 purchased merchandise and paid for the merchandise using his personal credit card.

12 13. During Plaintiff's credit card transaction, and pursuant to Defendant's  
13 uniform policy, Defendant's employee conducting the sale requested Plaintiff's  
14 personal identification information in the form of his driver's license, address, and  
15 telephone number, without informing Plaintiff of the consequences if Plaintiff did not  
16 provide Defendant's employee with Plaintiff's requested personal identification  
17 information.

18 14. Plaintiff, reasonably believing that he was required to provide the requested  
19 information to complete the transaction and receive his receipt, provided Defendant's  
20 employee with his driver's license, address, and telephone number.

21 15. Defendant's employee then recorded Plaintiff's personal identification  
22 information by typing it into a store computer.

23 16. Plaintiff is informed and believes that Defendant engages in a pattern and  
24 practice of knowingly requesting, and subsequently recording, personal identification  
25 information of its customers, including but not limited to customer's driver's licenses,  
26 addresses, and/or telephone numbers, at all its retail stores in California as a matter of  
27 policy during its credit card transactions.

1 17. Plaintiff is informed and believes that Defendant has been engaged in, and  
2 continues to engage in, a similar practice affecting the Class defined herein during the  
3 applicable statute of limitations period, including through the present.

4 18. As a result of Defendant's wrongful conduct, Plaintiff and all members of the  
5 Class defined herein are entitled to monetary relief.

6 **CLASS ACTION ALLEGATIONS**

7 19. Plaintiff brings this action on behalf of himself and other members of the  
8 Class defined as:

9 All persons who, within one (1) year prior to filing of the  
10 complaint in the within action, and up to and including the  
11 date of class certification, purchased merchandise with a  
12 credit card at a Bose retail store operated by Defendant in  
13 California and were requested to, and did, provide personal  
14 identification information which was then recorded by  
15 Defendant before or during the credit card transaction.

16 20. Members of the Class are so numerous that their individual joinder herein is  
17 impracticable. The precise number of Class members and their identities are  
18 unknown to Plaintiff at this time but may be readily determined from Defendant's  
19 records and other discovery.

20 21. Common questions of law and fact exist as to all Class members and  
21 predominate over questions affecting only individual Class members. Common legal  
22 and factual questions include, but are not limited to:

- 22 a. whether each Class member engaged in a credit card transaction with  
23 Defendant;  
24 b. whether Defendant requested the cardholder to provide personal  
25 identification information, and recorded the personal identification of the  
26 cardholder, during credit card transactions with class members;  
27 c. whether Defendant's conduct of requesting the cardholder to provide  
28 personal identification information during credit card transaction and

1 recording the personal identification information of the cardholder  
2 constitutes violations of California Civil Code section 1747.08;

3 d. whether Plaintiff and each Class member are entitled to statutory  
4 penalties as a matter of law; and

5 e. whether Plaintiff and the Class are entitled to injunctive relief.

6 22. The claims of the named Plaintiff are typical of the claims of the Class in that  
7 Plaintiff and each Class member was exposed to virtually identical conduct, and each  
8 is entitled to civil penalties in amounts of up to one thousand dollars (\$1,000) per  
9 violation pursuant to California Civil Code section 1747.08(e).

10 23. Plaintiff is an adequate representative of the Class because his interests do not  
11 conflict with the interest of the Class members he seeks to represent, he has retained  
12 competent counsel experienced in prosecuting class actions, and he intends to  
13 prosecute this action vigorously. The interests of the Class members will be fairly  
14 and adequately protected by Plaintiff and his counsel.

15 24. The class mechanism is superior to other available means for the fair and  
16 efficient adjudication of the claims of the Class members. Each individual Class  
17 member may lack the resources to undergo the burden and expense of individual  
18 prosecution of the complex litigation necessary to establish Defendant's liability.  
19 Individualized litigation increases the delay and expense to all parties and multiplies  
20 the burden on the judicial system presented by the complex legal and factual issues of  
21 this case. Individualized litigation also presents a potential for inconsistent or  
22 contradictory judgments. In contrast, the class action device presents far fewer  
23 management difficulties and provides the benefits of single adjudication, economy of  
24 scale, and comprehensive supervision by a single court on the issue of Defendant's  
25 liability. Class treatment of the liability issue will ensure that all claims and  
26 claimants are before this Court for consistent adjudication of the liability issues.

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**FIRST CAUSE OF ACTION**

**(Violation of California's Song-Beverly Credit Card Act,  
California Civil Code §§ 1747.08)**

25. Plaintiff hereby incorporates by reference each of the preceding paragraphs as though fully set forth herein.

26. California Civil Code section 1747.08 prohibits any corporation that accepts credit cards for the transaction of business from requesting the cardholder to provide personal identification information, which the corporation then records.

27. Defendant is a corporation that accepts credit cards for the transaction of business.

28. On or about October 18, 2015, Plaintiff purchased merchandize using a credit card from Defendant's retail store at 5630 Paseo Del Norte, Suite 140, in Carlsbad, California. Before the credit card transaction was completed, Plaintiff was requested to provide Defendant with his driver's license, address, and telephone number, which Plaintiff is informed and believes and therefore alleges that Defendant electronically recorded.

29. Defendant utilizes and continues to utilize a policy whereby Defendant's cashiers request customers to provide Defendant with personal identification information as a condition of accepting a credit card as payments for Defendant's goods.

30. Defendant is informed and believes, and therefore alleges that Defendant is not contractually obligated to obtain a customer's driver's license number, address, or telephone number in order to complete the credit card transaction, nor is Defendant required to record a consumer's telephone number by federal law or regulation.

31. Plaintiff is informed and believes, and therefore alleges that Defendant is not required to obtain a consumer's driver's license, address, or telephone number for a special purpose incidental, but related to, the individual credit card transaction.

1 32. Pursuant to California Civil Code § 1747.08, the Court is required to award  
2 statutory penalties in the event it determines that the Song-Beverly Credit Card Act  
3 has been violated.

4 33. Pursuant to California Civil Code § 1747.08(e), the Court must award  
5 penalties of up to two hundred fifty dollars (\$250.00) per violation for each primary  
6 violation, and up to one thousand dollars (\$1,000.00) per violation for each  
7 subsequent violation of the Song-Beverly Act.

8 34. Therefore, Plaintiff and the class are entitled to civil penalties in an amount to  
9 be proven at trial as provided for under California Civil Code § 1747.08(e).

10 **PRAYER FOR RELIEF**

11 WHEREFORE, the Representative Plaintiff, on behalf of himself and all  
12 persons and consumers similarly situated, pray for judgment against Defendant as  
13 follows:

14 1. That an order certifying the Class defined herein be entered designating  
15 Plaintiff and his counsel as representatives of said Class;

16 2. For an award to Plaintiff and each Class members of the civil penalty to  
17 which he or she is entitled under California Civil Code section 1747.08(e);

18 3. That the Court preliminarily and permanently enjoin Defendant from utilizing  
19 a policy whereby Defendant's cashiers both request and record personal identification  
20 information from customers using credit cards at the point-of-sale in Defendant's  
21 retail establishments;

22 4. For an award of attorney's fees pursuant to California Civil Code §1021.5;

23 5. For an award of costs of suit herein;

24 6. For prejudgment interest at the legal rate; and

25 7. For such other relief as this Court deems to be just and equitable.

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**JURY TRIAL DEMAND**

Plaintiff hereby demands a trial by jury.

Dated: January 29, 2016

By: /s/ Elliot Adler  
E. Elliot Adler, Esq.

/s/ Brittany Zumner  
Brittany S. Zumner, Esq.

*Attorneys for Plaintiff Patrick Keegan on  
behalf of himself and others similarly situated*